

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>WILMA J. TOWNSEND,</b>	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 1:02cv00160
	)	<b><u>MEMORANDUM OPINION</u></b>
<b>JO ANNE B. BARNHART,</b>	)	
<b>Commissioner of Social Security,</b>	)	By: PAMELA MEADE SARGENT
Defendant	)	United States Magistrate Judge

In this social security case, I affirm the final decision of the Commissioner denying benefits.

*I. Background and Standard of Review*

Plaintiff, Wilma J. Townsend, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for disability insurance benefits, (“DIB”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 423 (West 2003). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). This case is before the undersigned magistrate judge upon transfer pursuant to the consent of the parties under 28 U.S.C. § 636(c)(1).

The court’s review in this case is limited to determining if the factual findings of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4<sup>th</sup> Cir. 1987). Substantial evidence has been defined as “evidence which a reasoning

mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4<sup>th</sup> Cir. 1966). ““If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is “substantial evidence.””” *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4<sup>th</sup> Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Townsend filed her application for DIB on or about September 18, 2001, alleging disability as of November 28, 2000, based on back and chest pain, melanoma and sleeping and memory problems. (Record, (“R.”), at 50-53, 55.) The claim was denied initially and upon reconsideration. (R. at 35-37, 38, 40-41.) Townsend then requested a hearing before an administrative law judge, (“ALJ”). (R. at 42.) The ALJ held a hearing on July 12, 2002, at which Townsend was represented. (R. at 178-93.)

By decision dated August 19, 2002, the ALJ denied Townsend’s claim for benefits. (R. at 12-19.) The ALJ found that Townsend met the disability insured status requirements of the Act through the date of the decision. (R. at 17.) The ALJ found that Townsend had not engaged in substantial gainful activity since the alleged onset of her disability. (R. at 17.) The ALJ also found that the medical evidence established that Townsend had severe impairments, namely low back and neck pain, but he found that Townsend did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 18.) The ALJ further found that Townsend’s allegations regarding her limitations were not totally credible. (R. at 18.) The ALJ found that Townsend had the residual

functional capacity to perform light work<sup>1</sup> that did not require prolonged standing or walking. (R. at 18.) The ALJ found that Townsend could not perform her past relevant work. (R. at 18.) Based on Townsend's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that other jobs existed in the national economy that Townsend could perform. (R. at 18.) Therefore, the ALJ found that Townsend was not disabled at any time through the date of his decision. (R. at 18.) *See* 20 C.F.R. § 404.1520(g) (2004). Thus, the ALJ found that Townsend was not eligible for DIB benefits. (R. at 19.)

After the ALJ issued his decision, Townsend pursued her administrative appeals, (R. at 6), but the Appeals Council denied her request for review. (R. at 4-5.) Townsend then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. § 404.981 (2004). The case is before this court on Townsend's motion for summary judgment filed August 9, 2004, and the Commissioner's motion for summary judgment filed October 18, 2004.

## *II. Analysis*

Townsend was born in 1949, (R. at 50), which, at the time of the ALJ's decision, classified her as a person closely approaching advance age under 20 C.F.R. § 404.1563(d). Townsend has a ninth-grade education, and she has past work

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<sup>1</sup>The regulations define light work as work which does not entail lifting items weighing more than 20 pounds occasionally and more than 10 pounds frequently. If someone can perform light work, she also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b) (2004).

experience as an owner and operator of a rest home and as a cook for a rest home. (R. at 61, 69-70.)

In rendering his decision, the ALJ reviewed records from Dr. Simon Pennings, M.D.; Dr. Robert M. Glasgow, M.D.; Dr. Ann Jackson, M.D.; Dr. Bennett Cowan Jr., M.D.; Dr. Timothy McGarry, M.D.; Dr. Ashvin Patel, M.D.; Sharon Hughson, Ph.D.; Johnston Memorial Hospital; and various state agency physicians and psychologists.

While Townsend's counsel has filed a motion for summary judgment, that motion states no reason to vacate or reverse the Commissioner's decision denying benefits. (Motion for Summary Judgment, (Docket Item No. 23).) Nonetheless, I have reviewed the record in its entirety to determine whether substantial evidence supports the Commissioner's finding that Townsend was not disabled. Based on this review, I find that substantial evidence supports the decision. In particular, I find that Dr. Ashvin Patel's November 8, 2001, psychiatric evaluation supports the Commissioner's finding that Townsend did not suffer from a severe mental impairment. (R. at 128-29.)

### *III. Conclusion*

For the foregoing reasons, the Commissioner's motion for summary judgment will be granted, Townsend's motion for summary judgment will be denied, and the Commissioner's decision to deny benefits will be affirmed.

An appropriate order will be entered.

DATED: This 8<sup>th</sup> day of February, 2005.

/s/ Pamela Meade Sargent

UNITED STATES MAGISTRATE JUDGE